

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

JEFFREY MILLER, Register No. 1152842,)	
)	
Plaintiff,)	
)	
v.)	No. 06-4198-CV-C-NKL
)	
CAPTAIN SAM HARGRAVE, et al.,)	
)	
Defendants.)	

REPORT AND RECOMMENDATION

Plaintiff Jeffrey Miller, while confined in a Missouri penal institution, brought this case under the Civil Rights Act of 1871, 42 U.S.C. § 1983, and its corresponding jurisdictional statute, 28 U.S.C. § 1343. This case was referred to the undersigned United States Magistrate Judge for processing in accord with the Magistrate Act, 28 U.S.C. § 636, and L.R. 72.1.

On August 21, 2007, defendants filed a motion to dismiss for plaintiff's failure to prosecute. Defendants note that discovery has not occurred, other than the filing of Rule 26 disclosures, and that plaintiff's whereabouts are unknown. In July 2007, defendants sent plaintiff a copy of their motion to amend the scheduling order and it was returned with a notation that plaintiff had been paroled. Defendants state they have been unable to find a current address for plaintiff, despite calls to his probation office, and plaintiff has not filed a change of address with the court.

Likewise, an order sent to plaintiff on August 20, 2007, was returned undeliverable and marked "paroled 6-25-07." The last submission to the court by plaintiff was in April 2007, when he paid the initial portion of the filing fee and filed objections to a report and recommendation.

Plaintiff has taken no affirmative steps to advance his claims for several months, has not responded to defendants' motion and has not kept the court or defendants informed of his current address. Under Fed. R. Civ. P. 41(b), the court is authorized to dismiss an action for plaintiff's failure to prosecute. In the absence of some indication from plaintiff that he intends to prosecute this case, it should be dismissed. Accordingly, it is

RECOMMENDED that defendants' motion of August 21, 2007, to dismiss be granted and plaintiff's claims in this case be dismissed for failure to prosecute, pursuant to the provisions of Fed. R. Civ. P. 41(b). [38]

Under 28 U.S.C. § 636(b)(1), the parties may make specific written exceptions to this recommendation within twenty days. The District Judge will consider only exceptions to the specific proposed findings and recommendations of this report. Exceptions should not include matters outside of the report and recommendation. Other matters should be addressed in a separate pleading for consideration by the Magistrate Judge.

The statute provides for exceptions to be filed within ten days of the service of the report and recommendation. The court has extended that time to twenty days, and thus, additional time to file exceptions will not be granted unless there are exceptional circumstances. Failure to make specific written exceptions to this report and recommendation will result in a waiver of the right to appeal. See L.R. 74.1(a)(2).

Dated this 24th day of September, 2007, at Jefferson City, Missouri.

/s/ William A. Knox

WILLIAM A. KNOX
United States Magistrate Judge